

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WAYNE SMITH
Plaintiff,

VS.

JUDGE DAVID HITTNER
AND
MTGLQ INVESTORS, L.P.
Defendants.

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CIVIL ACTION NO. 4:21-CV-3079

**DEFENDANT’S OPPOSED MOTION FOR A CONTINUANCE OF THE JOINT
DISCOVERY/CASE MANAGEMENT PLAN AND THE INITIAL PRETRIAL AND
SCHEDULING CONFERENCE, AND ALL OTHER DEADLINES PURSUANT TO FED.
R. CIV. P. 26(f)**

The United States, through the undersigned Assistant United States Attorney (AUSA), respectfully moves for a continuance of the filing of a Joint Discovery/Case Management Plan, the Initial Pretrial and Scheduling Conference scheduled for December 17, 2021, and all other deadlines.

BACKGROUND

1. Plaintiff, a pro se litigant, was a party (mortgagee) in a residential foreclosure case. On or about May 24, 2019, Plaintiff filed a lawsuit, Civil Action No. H-19-1888 (USDC No. 4:19-cv-1888) , against MTGLQ Investors, LP (hereinafter MTGLQ). In that case, MTGLQ filed a motion to dismiss on July 25, 2019, for failure to state a claim. On August 23, 2019, Judge Hittner, Defendant here, granted MTGLQ’s motion to dismiss.¹ Thereafter, Plaintiff appealed Judge Hittner’s decision on September 17, 2019 and the Appellate Court affirmed on August 17, 2021. As a result, Plaintiff filed

¹ Exhibit 1 (order-doc 29)

the instant suit against Judge David Hittner on September 17, 2021 alleging violation of Civil Rights for alleged acts committed within Defendant's judicial jurisdiction.

2. Defendant, Judge David Hittner, is assigned an AUSA from the Department of Justice to represent him in this case. The AUSA assigned to represent Judge David Hittner is Alexander N. DerGarabedian. However, this representation must be officially authorized and approved by Main Justice in Washington D.C. Main Justice has not yet been able to provide this approval and authorization. As a result, AUSA DerGarabedian cannot make an appearance in this matter nor can he confer on the joint discovery case management plan, or any issue in this case, with the pro se plaintiff, Wayne Smith until approval from Main Justice is received.

REQUEST FOR RELIEF

Defendant requests that the Court continue the filing of the Joint Discovery/Case Management Plan, the Initial Pretrial and Scheduling Conference, and all other deadlines for 60 days as it will not prejudice any party of this case.

Based on the foregoing, the United States requests that the Court grant this motion and enter an order continuing the filing of the Joint Discovery/Case Management Plan, the Initial Pretrial and Scheduling Conference and all other deadlines for at least 60 days from the date of this motion.

CERTIFICATE OF CONFERENCE

Counsel for the Defendant is not currently able to confer with Wayne Smith for the above stated reasons and therefore this motion is opposed.

Respectfully submitted,

JENNIFER B. LOWERY

Acting United States Attorney
Southern District of Texas

BY: s/ Alexander N. DerGarabedian

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CERTIFICATE OF SERVICE

I, Alexander N. DerGarabedian, Assistant United States Attorney for the Southern District of Texas, hereby certify that on this 2nd day of December 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

By: s/ Alexander N. DerGarabedian

ALEXANDER N. DERGARABEDIAN

Assistant United States Attorney